IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.10479 of 2024
and
W.M.P.Nos.11478, 11480 & 11482 of 2024

Texcel Engineers Pvt. Ltd.,
No. 1, O-Block, Ganapathy Colony,
Anna Nagar East S.O,
AnnaNagar,
Chennai-600 102,
Represented By its Director
Sudhakaran Padinjarethil Muthukattil. ...Petitioner

Vs.

Assessment Unit,
Income Tax Department,
Ministry of Finance,
Government of India, Delhi. ... Respondent

Prayer in both W.P's: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records contained in order dated 28.03.2024 bearing ITBA/ AST/S/143(3)/2023-24/1063533326(1) issued by the Respondent for AY 2022-23 for PAN:AAACT1271D under Section 143(3) read with Sections 144B of the Income Tax Act, 1961 and to quash the same as arbitrary, illegal and unjust.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mrs.S.Premalatha
Junior Standing Counsel

ORDER

Challenging the impugned assessment order dated 28.03.2024 passed by the respondent relating to the assessment year 2022-2023, the petitioner has filed the present Writ Petition.

2. The petitioner filed their returns on 17.12.2022, declaring a total income of Rs.1,04,42,535/-. It was selected for scrutiny assessment for the reason that there had been a significant increase in the unsecured loans during the said year as compared to the previous years. Thereafter, various show cause notices were issued and the petitioner also duly submitted their reply. However, the respondent passed the assessment order dated 28.03.2024, making an addition of Rs.3,00,69,542/- to the petitioner's income. Challenging the same, the petitioner has come forward with the present Writ Petition.

3. The learned counsel for the petitioner would submit that the

respondent made the above said addition on the ground that the transfer of unsecured loan to the extent of Rs.3,00,69,542/- did not reflect in the bank account statement submitted by the petitioner. He would submit that the petitioner received a sum of Rs.3,00,69,542/- from Mr.M.P.Sudhakaran, Director of the Company. By referring to the statement of the petitioner bank as well as the bank statement of Mr.M.P.Sudhakaran, the learned counsel would submit that it is evident that the said amount was duly transferred by way of bank transfer and the same was debited from the bank account of the lender, Mr.M.P.Sudhakaran. However, without considering the same, by non-application of mind, the respondent has passed the impugned assessment order, which is liable to be set aside.

4. On the other hand, the learned Junior Standing counsel for the respondent would submit that multiple opportunities have been provided to the petitioner, but the petitioner has not substantiated as regards the receipt of unsecured loan from the lender and on scrutiny of the bank statement and copies of confirmation of the parties, it was noticed that the lender who had advanced unsecured loan to the petitioner, there is difference of Rs.3,00,69,542/- in the bank statement and also in the ledger account

submitted by the petitioner and therefore, the genuineness of the unsecured loan to the said amount has not been provided by the petitioner, hence, the respondent has rightly passed the assessment order by making addition of the same, which requires no interference. However, she would urge this Court that in the event this Court comes to conclusion that the impugned assessment order is liable to be set aside, the matter may be remanded to the respondent for fresh consideration.

5. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Junior Standing counsel for the respondent.

6. According to the respondent, despite multiple opportunities extended to the petitoner to substantiate the receipt of unsecured loan from the lender, however, the petitoner failed to establish the genuineness of the said unsecured loan. But the fact remains that a notice dated 05.02.2024 under Section 133(6) to the lender of the unsecured loan, viz., Mr.M.P.Sudharakaran, who in turn filed his reply on 09.02.2024 confirming the transfer of the said unsecured loan to the petitioner's account and he also produced his ICICI bank

statement which reflected the debit entry in respect of the said amount. However, without considering the reply, dated 09.02.2024 submitted by the lender, after one and half month, by non-application of mind, the respondent passed the impugned asessment order, dated 28.03.2024, which in the opinion of this Court, is liable to set aside.

7. In such view of the matter, though this Court feels that there is no necessity to remand the matter for re-consideration, however, considering the plea made by the learned Junior Standing counsel for the respondent, the matter is remanded back to the respondent for fresh consideration.

8. Accordingly, while setting aside the impugned assessment order dated 28.03.2024, the matter is remanded back to the respondent for re-consideration. The petitioner is directed to file any further reply/objection along with relevant documents to substantiate the unsecured loan received from the lender, within two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to consider the same and pass appropriate orders, after affording an opportuity of personal hearing to the petitioner.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

21.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd/suk
To
Assessment Unit,

Income Tax Department,

Ministry of Finance,

Government of India, Delhi.

Krishnan Ramasamy,J.,

jd

W.P.No.10479 of 2024

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